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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

The Supreme Court of the United States has held the State of Washington business tax, as applied to a domestic company engaged exclusively in interstate commerce, to discriminate in its practical operation against interstate commerce and has reversed a judgment of the Supreme Court of the State of Washington regarding the tax as valid as applied to such a company. (See page 327.)

The New York Supreme Court, Appellate Division, Fourth Department, has ruled that a certificate of incorporation may be amended so as to deprive consenting stockholders of their preemptive rights as to future stock issues, but that such an amendment could not bind a stockholder who opposed its adoption. (*Albrecht, Maguire & Co., Inc. v. General Plastics Inc. et al.*, decided January 12, 1939.)

The Oklahoma Supreme Court has held that a judgment by default recovered against an unlicensed foreign corporation doing business in Arkansas, predicated upon service of process upon an Arkansas state official as the corporation's statutory agent, is entitled to be accorded full faith and credit by the courts of Oklahoma. (See page 322.)

Raymond Kenway

President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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What Constitutes Doing Business*

Leasing of Machinery—Unlicensed Foreign Corporations

Where a foreign corporation takes machinery into a state in which it is not licensed and leases the machinery to persons or corporations within that state, it has been held that such activity constitutes "doing business" so as to require the foreign corporation to be licensed to carry on business in the state. Cases to this general effect, decided in the courts of Illinois, Missouri, Pennsylvania and Texas are: *Erie & Michigan Railway & Navigation Co. v. Central Railway Equipment Co.,* 152 Ill. App. 278; *United Shoe Machinery Co. v. Ramlose,* 210 Mo. 631, 109 S. W. 567; *State ex rel. W. B. Hays v. Robertson et al.,* 271 Mo. 475, 196 S. W. 1132, 202 S. W. 300; *Commonwealth of Pennsylvania v. National Cash Register Co.,* 117 Atl. 439; *Davis v. United Shoe Repairing Co.,* 92 S. W. 2d 1107.

That a similar rule may be regarded as applicable in the states of Colorado, Florida, South Dakota, Utah, Washington, West Virginia and Wisconsin may be deduced from the fact that the statutes of these states contain provisions requiring a foreign corporation to be authorized to do business before holding personal property within the state.

In Alabama, Arizona, Arkansas, Idaho, Iowa, Michigan, Mississippi, Missouri, New York, Oklahoma, South Dakota, Texas, Utah, Vermont and Wisconsin, unlicensed foreign corporations are denied the right to maintain actions on contracts arising out of intrastate business. Inasmuch as the general trend of court decisions is to indicate that the leasing of machinery is intrastate business, the states mentioned might be expected to deny an unlicensed lessor corporation the right to enforce contracts under which machinery was leased. It may be added that even though authority to transact business is obtained in these states after prohibited intrastate activities have been carried on, the corporation's disability to sue continues with respect to causes of action which arose out of such prohibited intrastate activities.

With regard to the majority of the remaining states, it is probable that if their courts should adopt the general view that leasing of machinery constitutes "doing business," a suit in connection with such leasing could be maintained *provided the corporation first obtained authority to do business,* as the statutes of most of these states are so phrased as to deny to unlicensed foreign corporations the right to maintain suits in connection with intrastate business *only so long as they remain unlicensed.*

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* *This is one of a series of articles on What Constitutes Doing Business.* *See page 334 for a list of pamphlets obtainable on this important subject.*

Domestic Corporations

Delaware—Massachusetts.

Decree of United States District Court upholding validity of mortgage of substantially all of Delaware corporation's property by board of directors, ratified by stockholders, affirmed by Circuit Court of Appeals. In *Greene, Receiver in Bankruptcy of Concrete Materials Company v. Reconstruction Finance Corporation et al.,* 24 F. Supp. 181, (The Corporation Journal, December, 1938, page 270), the United States District Court, District of Massachusetts, held that a mortgaging of substantially all of a Delaware corporation's property located in Massachusetts, by its board of directors, ratified by the stockholders, was a valid act under the Delaware statute authorizing the board of directors to "sell, lease or exchange" all of the corporate property, pointing out, however, that the execution of mortgages by the directors was voidable and subject to ratification by the stockholders. Upon appeal, the United States Circuit Court of Appeals, First Circuit, has affirmed the decree of the District Court "for the reason that the trustee in bankruptcy, as the representative of creditors or of the corporation cannot question the validity of the mortgages." *Greene, Trustee, v. Reconstruction Finance Corporation et al.,* United States Circuit Court of Appeals, First Circuit, November 12, 1938. Commerce Clearing House Court Decisions Requisition No. 205217; 100 F. 2d 34. John F. Groden (J. Raymond Spence and Devine, York & Russell, on the brief), of Boston, for appellant. Harry Bergson of Boston, for appellee Reconstruction Finance Corporation.

Massachusetts.

Stockholders' right to maintain derivative action for cancellation of shares issued without actual consideration, upheld. Plaintiff stockholders of defendant corporation brought this action for the benefit of the company, alleging fraud and mismanagement on the part of the corporation's president and certain directors, who were also made defendants. It appearing that 1698 shares out of 2000 voting shares, held or controlled by the president, had been issued without actual consideration and that the company was being exploited for his personal gain, the Supreme Judicial Court of Massachusetts ruled that the corporation was entitled to a remedy by cancellation of the shares. The master to whom the matter had been referred had found that the plaintiffs had not sought relief through the board of directors because they believed that any such effort would have been futile, and had concluded that such belief was well founded. Upon this showing, the court ruled that plaintiffs were properly allowed by the lower court to vindicate the rights of the corporation. *Miner et al. v. First Citizens Bankers Corporation et al.,* 17 N. E. 2d 106. J. A. Donovan and J. M. Hargedon of Lawrence, for plaintiffs. J. G. Kelly of Boston, for defendants.

New York.

Where a stockholder institutes a derivative action, the corporation, as a party defendant, may not move to be made a co-plaintiff and to be dropped as a party defendant. A stockholder commenced a derivative action to recover from the defendants monies alleged to have been wrongfully obtained or wasted through corporate mismanagement. The corporation, for whose benefit the suit was brought, having been made a party defendant, filed an answer in which it joined in the plaintiff's prayer for relief and moved for leave to be joined as a co-plaintiff and to be dropped as a party defendant. This was granted in Special Term, Supreme Court, New York County. On appeal, the Appellate Division, First Department, reversed the order granting the motion, saying: "A derivative stockholder's action will not lie where the corporation, for the benefit of which the action is instituted, elects to bring suit itself." The court pointed out that the stockholder's privilege to maintain a derivative action is based upon the theory that the officers and directors either have refused to sue or would refuse, if requested, since their interests might be contrary to the welfare of the corporation which they control and concluded that if it were "to permit the order now under attack to stand, the result would be a misjoinder of the plaintiffs. The parties would be allowed to do indirectly what they properly could not do directly." *General Investment Corporation et al. v. Addinsell et al.*, 7 N. Y. S. 2d 377. Commerce Clearing House Court Decisions Requisition No. 204439. A. Donald MacKinnon, of counsel (Sullivan & Cromwell, attorneys for appellants Addinsell, Crispell, Wheaton and Woods; Saypol & Kotler, attorneys for appellant Beall; Parker & Duryee, attorneys for appellant Devendorf; Seibert & Riggs, attorneys for appellants Glines and Seagrave; Mudge, Stern, Williams & Tucker, attorneys for appellants Hines, Amerex Holding Corporation and Trimway Corporation; Travis, Brownback & Paxson, attorneys for appellant Peirce; Satterlee & Canfield, attorneys for appellant American General Corporation; Milbank, Tweed & Hope, attorneys for appellant The Chase National Bank of the City of New York). Mortimer Hays, of counsel (Abraham N. Geller, Merwin D. Maier and Robert B. Block with him on the brief; Szold & Brandwen, attorneys for respondent General Investment Corporation; Abraham N. Geller, attorneys for respondent Bernard Weiss.)

Non-stock corporation held to have power to take property by devise or bequest. The Surrogate's Court, Richmond County, in passing upon the right of an incorporated hospital to take, under a will, real and personal property of the testator, ruled that, inasmuch as Section 14 of the General Corporation Law grants to every corporation the power "to acquire property for the corporate purposes by grant, gift, purchase, devise or bequest, and to hold and dispose of the same, subject to such limitations as may be prescribed by law," the corporation had the right to receive the property under the will. The fact that Section 15 of the General Corporation Law, con-

taining language limiting the value of property a corporation other than a stock corporation may "take or hold" did not provide that such a corporation may take by devise and bequest, was held not to affect the corporation's right, in view of the specific power to take by devise or bequest given in Section 14. *In re Clark's Estate,* 7 N. Y. S. 2d 299. John M. Braisted, Jr., of Port Richmond, for petitioner. Rabenold, Scribner & Miller of New York City, for executor. C. Ernest Smith of St. George, S. I., for Staten Island Hospital.

Foreign Corporations

Arkansas.

Unlicensed foreign corporation, entering into contracts with local merchants for manufacture of advertising films and for their exhibition in local theatres, ruled "doing business" and subject to penalty. The Arkansas Circuit Court has held an unlicensed foreign corporation to be "doing business" under the following circumstances and subject to a penalty of $1,000: The corporation contacted theatres within the state and arranged for the exhibition of advertisements by means of films which the corporation was to make and furnish. The company then entered into contracts with local merchants in the communities in which the theatres were located, agreeing to prepare films advertising the merchants' goods and to have the films exhibited in local theatres, the merchants agreeing to pay for both the making of the films and for their exhibition. The Court said: "It is purely, as I see it, a local proposition. These films are not like general films that are made by picture concerns for consumption all over the United States; it is a different proposition. The film that they would make here and made under these contracts would be worthless outside of this county and, as I see it, would not be manufactured or made by the defendants at all unless they had a prior understanding with the theatre that they would run it and the price that they were going to run it for." "When they undertake to manufacture films for local people here and run them here in the community and collect for the whole thing, I believe it is just a local proposition and it would be nothing else but doing business in this community and in this state. And, if they are not qualified under the laws of this state they would be subject to the penalty. That will be the judgment and the finding of this Court. The judgment will be $1000.00 as penalty against the defendant." *State ex rel. Independence County v. Alexander Film Co.,** Arkansas Circuit Court; received November 30, 1938. Commerce Clearing House Court Decisions Requisition No. 205662.

* The full text of this opinion is printed in **The Corporation Tax Service, Arkansas volume, page 520.**

Illinois.

Unlicensed foreign corporation, publishing newspaper supplement in New York, soliciting contracts in Illinois, approved in New York, maintaining office in Illinois for convenience of salesmen, held

engaged in interstate commerce and empowered to maintain suit in Illinois. Plaintiff, a New York corporation, was ruled by the Appellate Court of Illinois, First District, First Division, to be in a position to maintain suit in Illinois although not authorized to do business as a foreign corporation there, under the following circumstances. The principal office of the corporation was in New York. A sales office was rented in Chicago for the convenience of salesmen. Contracts for a supplement to Sunday editions of papers, published by plaintiff in New York, were approved in New York, from which point collections were made. A small bank account was maintained in Chicago for the payment of office rent and expenses. The court's ruling was based on the view that such activities were transactions in interstate commerce. *United Newspapers Magazine Corporation v. United Advertising Companies, Inc.*, 17 N. E. 2d 345. Bayley, Webster, Gregory & Hunter, Robert E. Covert and Thornton M. Pratt of Chicago, for appellant. Chadwick & Johnson, Rudolph L. Johnson and Cecil L. Cass of Chicago, for appellee.

New York.

Foreign corporation, withdrawn from state, held to have right to remove action initiated against it in state court to a Federal court, where it had merely filed notice of appearance in state court and filed bond there for removal to the Federal court. Plaintiff, a New York corporation, began this action in the New York Supreme Court against defendant Pennsylvania corporation, which had previously surrendered its certificate of authority to do business in New York. Service was made upon the Secretary of State, no complaint being served with the summons. Defendant appeared specially and moved to set aside the service on the ground that the Secretary of State was not authorized to accept service on the defendant for the reason that the liability, if any, on which the action was based, did not arise within the State of New York. That motion was denied by the Supreme Court and affirmed by the Appellate Division. Thereafter, and before the time to answer had expired, the defendant filed a general notice of appearance, a demand for a copy of the complaint, filed a bond and moved the case to the United States District Court, Southern District of New York. That court refused plaintiff's motion to remand to the State court, ruling that defendant's mere filing of a notice of appearance in the State court and of a bond for removal did not deprive the defendant of the right of removal. It was also held that the fact that a foreign corporation may have done or is doing business in the state and may be served in a State court action by serving the Secretary of State or that it may be so served in a State court action after it had surrendered its certificate of authority to do business in New York, did not deprive it of its right as a nonresident corporation to remove a case to the Federal court. *Excelled Sheepskin & Leather Coat Co., Inc. v. Talon, Inc.*, United States District Court, Southern District of New York, October 28, 1938. Commerce Clearing House Court Decisions Requisition No. 204134. Maurice

Kozinn, for plaintiff. Nims & Verdi (Stewart W. Richards, of counsel), for defendant.

Service of process upheld where made upon vice-president and general manager of foreign corporation who was permanently active in supervising sales of corporation to customers in state. In refusing to vacate service of summons upon the vice-president and general manager of a foreign corporation which had its sole plant and main office in St. Louis, Missouri, and sold its products to distributors in New York under the supervision of the vice-president and general manager who lived in New York, the Supreme Court, Special Term, Kings County, said: "The extent to which a corporation must do business in the State of New York to justify the service of process upon its representative depends upon the facts in each particular case. In the case at bar, defendant's vice-president and general manager was and has been in New York for several years for the purpose of transacting business for the defendant corporation and was vested with authority by the corporation to transact such business in this state. His continued official presence within this state, taken in consideration with the fact that the defendant is doing business in the nature of a continuous series of solicitation of orders within the state, not occasionally or casually, but with a fair measure of permanence and continuity, gives rise to the conclusion that the defendant is doing business in this state." *Pioneer Utilities Corporation v. Scott-Newcomb,** 7 N. Y. S. 2d 292. Weinstein & Levinson of New York City, for plaintiff. White & Case of New York City, for defendant. *Affirmed, New York Supreme Court, Appellate Division, Second Department,* 7 N. Y. S. 2d 970.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 252.

Oklahoma—Arkansas.

Judgment by default recovered in Arkansas against unlicensed foreign corporation doing business there, predicated upon service of process upon auditor of state of Arkansas as corporation's agent, held entitled to full faith and credit in Oklahoma. Plaintiff, a citizen of Arkansas, had recovered a judgment by default in Arkansas against defendant Oklahoma company, not licensed in Arkansas, based upon a claim for salary and expenses connected with business done by defendant in Arkansas. In this action in an Oklahoma county circuit court, plaintiff sought to recover upon the foreign judgment. The court had held the foreign judgment void on the ground that the Arkansas statute under which service was had upon the Auditor of State of Arkansas as agent for the foreign corporation was invalid. Upon appeal, the Oklahoma Supreme Court reversed the finding of the county court, and held that the judgment of the Arkansas court was "entitled to be accorded full faith and credit by the courts of this state," as "both federal and state courts have consistently upheld the validity of statutes designating service agents for foreign corporations, and have consistently sustained the jurisdiction of courts

in cases wherein service of summons or process was had pursuant to such statutes." *Fitz v. Hope Lumber & Supply Company*, 84 P. 2d 421. Commerce Clearing House Court Decisions Requisition No. 204824. Harry G. Davis, J. F. Quillin of Mena, Ark., and Marvin J. Quillin of Texarkana, Ark., for plaintiff in error. C. F. Gordon of Muskogee, Okla., for defendant in error.

Virginia.

Federal court service of process made upon foreign corporation's designated statutory agent at a point outside of court's jurisdiction set aside; service upon agent within court's district, appointed to receive, audit and settle claims, upheld. Suit was brought in the United States District Court, Western District, Virginia, at Danville, Virginia, by a resident of Danville, against a New Jersey corporation for breach of a contract entered in North Carolina. Defendant corporation had been admitted to do business in Virginia and, in accordance with statutory requirements, had designated the Secretary of the Commonwealth as its agent for the service of legal process upon it and had also designated A. T. Gunn of Danville as its agent, under statutory requirements, "for the reception, audit, settlement and payment of claims against the company" due to residents of Virginia. In endeavoring to obtain jurisdiction over the company, the plaintiff caused service to be made not only upon the Secretary of the Commonwealth at Richmond, in the Eastern District of Virginia, as statutory agent, but also upon the manager of defendant's business in the City of Danville, evidently upon the theory that such manager was an actual agent of the defendant. The latter service was made upon A. T. Gunn. The service upon the Secretary of the Commonwealth was quashed by the court because the service was made outside the court's jurisdiction. "While it may be argued," observed the court, "that a public official designated as statutory agent is constructively present in every county in the state, the fact remains that service of process is an actual thing and the objection lies in the fact that civil process of federal courts can be effectually served only within the territorial limits of the district in which it issues." Service upon the individual at Danville was, however, upheld, inasmuch as it was made within the district in which the plaintiff resided, upon an agent of the defendant who was within the district whom defendant had given authority which "left no room for doubt that notice to him was notice to the defendant of the claim against it." *Junk v. R. J. Reynolds Tobacco Co.*, 24 F. Supp. 716. Carter & Williams of Danville, for plaintiff. Harris, Harvey & Brown of Danville, for defendant.

Taxation

Georgia.

City ordinance imposing license fee upon "local broadcasters" held not to apply to corporation receiving all of its revenue by reason of

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ability to broadcast to recipients both within and without the state. The City of Atlanta, by ordinance, imposed a business license tax upon "local broadcasters" whose facilities were used to advertise the merchandise or services of those doing business in Atlanta "to the general public residents of the City of Atlanta and the State of Georgia," an annual fee of $300. being imposed. There was an exemption in the ordinance of any radio-broadcasting station with its entire time and all facilities used to broadcast matter brought to Atlanta by wire or wireless and rebroadcast or where advertisement broadcast was intended entirely for the benefit of persons who were non-residents of Atlanta and the State of Georgia. The lower court had held the ordinance unconstitutional as applied to a corporation operating a station in Atlanta which broadcast not only local advertisements of merchants and dealers having their places of business in Atlanta but which also rebroadcast programs originating in other states, all programs reaching not only persons in Atlanta and Georgia but also in many other states. The Supreme Court of Georgia, while finding it was not necessary to pass on the constitutionality of the ordinance, ruled that it did not apply to the corporation sought to be brought within its terms, as the company received all of its revenue by reason of its ability to broadcast to recipients or prospective customers, both within and without the State of Georgia. *City of Atlanta v. Atlanta Journal Co.*,* Supreme Court of Georgia, September 23, 1938. CCH Court Decisions Requisition No. 203067.

* The full text of this opinion is printed in **The Corporation Tax Service**, Georgia volume, page 7401.

New York.

Act of legislature, in exempting certain mortgages from mortgage recording tax, held to have no retroactive effect. In August, 1935, a real estate mortgage was recorded in the New York County Register's office and the mortgage recording tax paid thereon. The mortgage was a substitution for another mortgage as a part of and in compliance with a plan of reorganization under Sec. 77B of the Federal Bankruptcy Act. In 1936, the Tax Law was amended to provide that a mortgage such as that mentioned "is and shall be exempt from the taxes imposed by this article." The relator seeks a refund of the tax paid in August, 1935, on the ground that it had been "erroneously collected." The Supreme Court, Appellate Division, Third Department, in ruling that the tax had not been erroneously collected, remarked that the amendment "indicates no retroactive effect and no disposition on the part of the state to refund taxes already paid. Had the Legislature entertained any such purpose it could very easily have said so." A recovery was therefore denied. *Gramott Corporation v. Graves et al.*,* 7 N. Y. S. 2d 457. Miller, Owen, Otis & Bailly of New York City, for relator. John J. Bennett, Jr., of Albany, for State Tax Commission.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 4312.

Washington.

Business tax, as applied to corporation engaged exclusively in interstate commerce, held repugnant to interstate commerce clause of Federal Constitution. In *Gwin, White & Prince, Inc. v. Henneford et al.*, 75 P. 2d 1017, the Washington Supreme Court held that the Washington business tax, imposed by Chapter 180, Laws of 1935, was "remote, indirect and incidental" in its effect upon interstate commerce as applied to the entire gross earnings of a Washington company, the appellant, making shipments of fruit from that State to other states and foreign countries. Upon appeal, the Supreme Court of the United States has reversed the judgment of the Washington Supreme Court that the tax was valid as applied to appellant. The Supreme Court of the United States pointed out that the tax, "measured by the entire volume of the interstate commerce in which appellant participates, is not apportioned to its activities within the state. If Washington is free to exact such a tax, other states to which the commerce extends may, with equal right, lay a tax similarly measured for the privilege of conducting within their respective territorial limits the activities there which contribute to the service. The present tax, though nominally local, thus in its practical operation discriminates against interstate commerce, since it imposes upon it, merely because interstate commerce is being done, the risk of a multiple burden to which local commerce is not exposed." *Gwin, White & Prince, Inc., v. Henneford et al.*,* Supreme Court of the United States, January 3, 1939; Docket No. 75. Bayley & Croson of Seattle, for appellant. Commerce Clearing House Court Decisions Requisition No. 207656; 59 S. Ct. 325.

* The full text of this opinion is printed in **The Corporation Tax Service**, Washington volume, page 7389.

West Virginia.

Income from leasing of films in interstate commerce held not subject to gross income tax. Appellant, a foreign corporation as to West Virginia, accepted contracts in New York for the shipment to motion picture exhibitors in West Virginia of motion picture films, to be leased for specified periods and then shipped out of that State upon the corporation's instructions. The company was held by the United States District Court, Southern District of West Virginia, to be engaged in interstate commerce and therefore not subject to the West Virginia gross income tax as applied to income from the use of personal property. (The Corporation Journal, October, 1938, page 234.) The Supreme Court of the United States has affirmed the District Court in its conclusion that appellant was not subject to the tax. *James v. United Artists Corporation*,* Supreme Court of the United States, January 3, 1939; Docket No. 161. CCH Court Decisions Requisition No. 207660; 59 S. Ct. 272.

* The full text of this opinion is printed in **The Corporation Tax Service**, West Virginia volume, page 6229.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 302. *Felt and Tarrant Manufacturing Co. v. Corbett et al.*, 23 F. Supp. 186. (The Corporation Journal, June, 1938, page 208.) Validity of the California Use Tax. **Appeal filed, August 26, 1938. Probable jurisdiction noted, October 10, 1938. Argued, December 13, 1938.**

FEDERAL. Docket No. 328. *Guy T. Helvering, Commissioner of Internal Revenue, v. R. J. Reynolds Tobacco Company*, 97 F. 2d 302. (The Corporation Journal, December, 1938, page 279.) Federal income taxation—profits to corporation from trading in its own stock. **Appeal filed, September 8, 1938. Certiorari granted, October 17, 1938. Argued, January 6, 1939.**

NEW JERSEY. Docket No. 449. *Newark Fire Insurance Company v. State Board of Tax Appeals and the City of Newark*, 193 Atl. 912. (The Corporation Journal, January, 1939, page 302.) State Taxation —tax on intangible personal property of a domestic insurance company. **Appeal filed, October 31, 1938. Further consideration of the question of jurisdiction postponed to the hearing on the merits, November 21, 1938.**

WASHINGTON. Docket No. 75. *Gwin, White & Prince, Inc. v. Henneford et al.*, 75 P. 2d 1017. (The Corporation Journal, February, 1939, page 327.) Washington business and occupation tax—burden on interstate commerce. **Appeal filed, May 31, 1938. Probable jurisdiction noted, October 10, 1938. Argued, November 10, 1938. Reversed, January 3, 1939.** (See page 327.)

WEST VIRGINIA. Docket No. 161. *James v. United Artists Corporation*, 23 F. Supp. 353. (The Corporation Journal, October, 1938, page 234.) Taxation of gross income from lease of motion picture films in interstate commerce. **Appeal filed, June 30, 1938. Probable jurisdiction noted, and further consideration of the motion to affirm postponed to the hearing of the case on the merits, October 10, 1938. Argued, December 9, 1938. Affirmed January 3, 1939.** (See page 327.)

*** Data compiled from CCH U. S. Supreme Court Service, 1938-1939.**

Regulations and Rulings

LOUISIANA—Rules and Regulations relative to the Louisiana Income Tax have been promulgated by the Collector of Revenue. (Printed in full in the Louisiana CT Service, ¶ 14-500—14-736.)

NEW YORK—The Attorney General of New York has rendered an opinion that where a foreign corporation enters the State solely to exhibit its method of manufacture or its goods at the World's Fair of 1939, and for no other purpose, it is not "doing business" in New York, and that it would not need to qualify nor would it be subject to taxation by reason of such exhibitions. (For full text of opinion, see New York CT (Corporation Tax) Service, ¶ .421.)

OHIO—The Tax Commission of Ohio has selected November 4, 1938, as the date as of which deposits in financial institutions are to be assessed in 1939 property tax returns. (Ohio CT, ¶ 20-621.)

OKLAHOMA—Where a foreign corporation has property in Oklahoma which is subject to taxation, even though it has not been listed and assessed for taxation, the stock of such foreign corporation owned by an Oklahoma citizen is exempt from taxation in the opinion of the Attorney General. (Oklahoma CT, ¶ 23-840.)

PENNSYLVANIA—The Bureau of Internal Revenue of the United States has ruled (I. T. 3210, 1938-35-9519) (p. 18), that the Pennsylvania bonus required to be paid on the capital employed or to be employed in that state by foreign corporations is not a tax but is a capital expenditure which is not deductible for Federal income tax purposes. (Pennsylvania CT, ¶ .404.)

The Attorney General has advised the Secretary of Revenue that Act of June 25, 1937, P. L. 2063, which requires corporations to report certain unclaimed funds to the Secretary of Revenue, is applicable to Pennsylvania corporations having funds of the type named in the statute on deposit in other states. (Pennsylvania CT, ¶ 34-015.)

RHODE ISLAND—The Attorney General, in an opinion to the Director of Labor of Rhode Island, has upheld the Director in refusing to receive or file any "acceptance" of the Workmen's Compensation Act by any foreign corporation unless and until that corporation has qualified to do business in Rhode Island and thus rendered itself available to Rhode Island courts. (Rhode Island CT, ¶¶ .401, .402.)

TENNESSEE—A ruling of the Attorney General indicates that a foreign corporation is "doing business" in Tennessee when it maintains three offices in the state and the managers of these offices supervise the independent dealers of the company with whom business is carried on with reference to the accounts which are owing to the company, etc., the independent dealers purchasing products from the corporation which are shipped to them and sold to their customers. (Tennessee CT, ¶ .409.) The Attorney General has also expressed the view that a corporation which maintains a warehouse in Tennessee from which its products are shipped to customers in other states, no sales being made from this warehouse to customers in Tennessee, is doing intrastate business in Tennessee which render it liable for the Tennessee excise tax. (Tennessee CT, ¶ 1982C.)

Some Important Matters for February and March

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

ARIZONA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Franchise (Income) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

COLORADO—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1938.

DOMINION OF CANADA—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before March 1.—Domestic and Foreign Corporations.

IDAHO—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

IOWA—Income Tax Return, Returns of Information at the source and Returns of Tax Withheld at the source due on or before March 31.—Domestic and Foreign Corporations.

KANSAS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

KENTUCKY—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MINNESOTA—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSISSIPPI—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Returns due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital Employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

MONTANA (Continued)

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NEVADA—Annual Statement of business due not later than the month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before the first Tuesday in February.—Domestic Corporations.

NEW MEXICO—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

NEW YORK—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax Report and Tax of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations.

NORTH CAROLINA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Combined Excise (Income) Tax Return and Intangibles Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before March 15.—Domestic Corporations.

PENNSYLVANIA (Continued)

Franchise Tax Report and Tax, Corporate Loans Tax Report and Tax and Bonus Tax Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during February.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

UTAH—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

WISCONSIN—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

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In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

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We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with corporate representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

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Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as corporate representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

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Vikings

Book 1